

(1) Produced a 2009 crop year planted or considered planted long grain rice, medium or short grain rice, upland cotton, soybean, or sweet potato crop in a 2009 eligible disaster county, and

(2) Suffered a five percent or greater loss in an eligible disaster county in 2009. A list of the disaster counties for CAP is available on the FSA Web site and at FSA county offices.

§ 760.704 Time and method of application.

(a) To request a CAP payment, the producer must submit a CAP application on the form designated by FSA to the FSA county office responsible for administration of the farm.

(b) Producers submitting an application for a crop must certify that they suffered a five percent or greater loss of the crop on the farm in a disaster county and that they have documentation to support that certification as required in § 760.713.

(c) Once submitted by a producer, the application is considered to contain information and certifications of and pertaining to the producer's crop and farm regardless of who entered the information on the application.

(d) Producers requesting benefits under CAP must certify the accuracy and truthfulness of the information provided in the application as well as with any documentation that may be provided with the application or documentation that will be provided to FSA in substantiation of the application. All certifications and information are subject to verification by FSA.

(e) Producers applying for CAP must certify that they have an eligible ownership share interest in the 2009 crop acreage that sustained a five percent or greater loss. The determination and certification by a producer that a crop suffered the requisite five percent or greater farm crop loss is the expected quantity of production of the crop less the actual production of the crop.

(f) In the event that the producer does not submit documentation in response to any request of FSA to support the producer's application or documentation furnished does not show a crop loss of at least five percent as claimed, the application for that crop will be disapproved in its entirety. For

quantity losses, producers need to apply a standard similar to the historic yield provisions used under previous ad hoc disaster programs. Those provisions provided that a historic yield was the higher of a county average yield or a producer's approved yield. Thus, if an applicant is determining whether a farm has a crop that suffered a loss of five percent or greater on the farm's planted and considered planted acreage, the applicant could compare the amount successfully produced in 2009 from those planted and considered planted acres to what the participant expected to produce from that acreage using either the county average yield (which may be obtained from FSA by request) or based on analysis of approved actual production history yields that may exist for producers of the crop on the farm.

(g) Unless otherwise determined necessary by FSA, producers will not be required to submit documentation of farm crop production or loss at time of application. FSA's decision not to require proof, documentation, or evidence in support of any application at time of application is not to be construed as a determination of a producer's eligibility.

(h) Producers who apply are required to retain documentation in support of their application for three years after the date of application in accordance with § 760.713.

(i) The application submitted in accordance with this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the producer has submitted all the required forms. In addition to the completed, certified application form, if the information for the following forms or certifications is not on file in the FSA county office or is not current for 2009, the producer must also submit:

(1) Farm operating plan for individual or legal entity;

(2) Average adjusted gross income statement for 2009; and

(3) Highly erodible land conservation (HELC) and wetland conservation certification.

(j) Application approval and payment by FSA does not relieve a producer

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from having to submit any form, records, or documentation required, but not filed at the time of application or payment, according to paragraph (h) of this section.

§ 760.705 Payment rates and calculation of payments.

(a) CAP payments will be calculated by multiplying the total number of reported or determined acres of an eligible crop by the per acre payment rate for that crop. Payment rates are as follows:

- (1) Long grain rice, \$31.93 per acre;
- (2) Medium or short grain rice, \$52.46 per acre;
- (3) Upland cotton, \$17.70 per acre;
- (4) Soybeans, \$15.62 per acre; and
- (5) Sweet potatoes, \$155.41 per acre.

(b) Payments will be calculated based on the 2009 crop year reported or determined planted or considered planted acres of an eligible crop on a farm in a disaster county as reflected on a form FSA-578, Report of Acreage, on file in FSA as of October 22, 2010.

§ 760.706 Availability of funds.

(a) Payments specified in this subpart are subject to the availability of funds. The total available program funds are \$550 million. In order to keep payments within available funds, the Deputy Administrator may pro-rate payments, to the extent the Deputy Administrator determines that necessary.

(b) Funds for CAP are being made available only for the 2009 crop year reported and determined eligible crop acreage in disaster counties as reflected on a form FSA-578, Report of Acreage, as of October 22, 2010.

§ 760.707 Proof of loss.

(a) All certifications, applications, and documentation are subject to spot check and verification by FSA. Producers must submit documentation to FSA if and when FSA requests documentation to substantiate any certified application.

(b) Producers are responsible for retaining or providing, when required, verifiable or reliable production or loss records available for the crop. Producers are also responsible for summarizing all the production or loss evi-

dence and providing the information in a manner that can be understood by the county committee.

(c) Any producer receiving payment under this subpart agrees to maintain any books, records, and accounts supporting any information or certification made according to this part for 3 years after the end of the year following application.

(d) Producers receiving payments or any other person who furnishes such information to FSA must permit FSA or authorized representatives of USDA and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books, records or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 760.708 Miscellaneous provisions and limitations.

(a) A person ineligible under § 1437.15(c) of this title concerning violations of the Noninsured Crop Disaster Assistance Program for the 2009 crop year is ineligible for benefits under this subpart.

(b) A person ineligible under § 400.458 of this title for the 2009 crop year concerning violations of crop insurance regulations is ineligible for CAP.

(c) In the event that any request for CAP payment resulted from erroneous information or a miscalculation, the payment will be recalculated and the producer must refund any excess to FSA with interest to be calculated from the date of the disbursement to the producer. If for whatever reason the producer signing a CAP application overstates the loss level of the crop when the actual loss level determined by FSA for the crop is less than the level claimed, or where the CAP payment would exceed the producer's actual loss, the application will be disapproved for the crop and the full CAP payment for that crop will be required to be refunded with interest from date of disbursement. The CAP payment cannot exceed the producer's actual loss.